



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: **BERNARD K. SIMCOVITCH**
Serial No.: 10/810,544
Filing Date: March 29, 2004
Title: **SAFE-T CUP LID**
Group Art Unit: 3727
Examiner: **Ms. Robin A. Hylton**

DECLARATION IN SUPPORT OF PETITION FOR REVIVAL OF
APPLICATION
UNINTENTIONALLY ABANDONED

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

CHARLES I. BRODSKY, being hereby warned that wilfully false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of United States Code, and that wilful false statements may jeopardize the validity of this document declares that:

1. I am the attorney of record for the above Applicant since the filing of this Application on March 29, 2004.
2. On May 3, 2006, Examiner Robin Hylton issued a Final Rejection of Claims 4-12 and 15-17, the only claims pending in the Application. The Rejection was under 35 U.S.C. 112, Second Paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regarded as the invention.

The Specification was also objected to because the brief description of FIGURE 4 did not appear to correspond with what was actually shown.

06/18/2007 MGEBREH1 09000018 10810544

01 FC:2453
02 FC:2254

750.00 OP
570.00 OP

The Drawings were objected because it was unclear how a door panel showed in the Drawings slid between recited grooves.

3. An Amendment Under Rule 116 dealing with these issues was filed on May 25, 2006.

4. On June 8, 2006, Examiner Hylton issued a Notice of Non-Compliant Amendment on the grounds that the Amendment to the claims did not include a complete listing of all of the claims presented.

5. Under date of June 13, 2006 I forwarded a Corrected Amendment Under Rule 116, responding to the Final Rejection of May 3, 2006, and to the Notice of Non-Compliant Amendment of June 8, 2006. The only difference between the June 13th Corrected Amendment, and the one filed May 25th was the recitation that Claims 1-3, 13-14, and 18-19 were previously canceled. In all other respects, the two Amendments were identical.

6. On June 13, 2006, the same day that the Corrected Amendment was mailed, Examiner Hylton issued an Advisory Action repeating the Non-Compliance, and continued to take issue with the Amendment to the Claims to overcome the 35 U.S.C. 112 Rejection.

7. The Corrected Amendment of June 13th was timely filed before the "due date" set forth in the June 8, 2006 Notice of Non-Compliance.

8. On June 30, 2006, Examiner Hylton left a voice-mail message to inform me that the After-Final Amendment had been received and was under consideration. This was embodied in an Examiner-Initiated Interview Summary mailed July 11, 2006.

9. On August 1, 2006 Examiner Hylton issued an Advisory Action to the effect that my Amendment overcame the Claim Rejections of 35 U.S.C. 112, and that Claims 4-12 and 15-17 were allowed.

Examiner Hylton continued to object to the Drawing, and required correction with respect to the description of FIGURE 5 in the Specification.

10. All this was within the time period set for response in the May 3, 2006 Final Rejection.

11. On October 3, 2006 I faxed a Second Corrected Amendment under Rule 116 to Examiner Hylton to include a substitute FIGURE 5 to deal with the Objection raised to the Drawing. Substitute Specification pages 5-8 were submitted to deal with the issue of the description of FIGURE 5.

12. My second Corrected Amendment Under Rule 116 concluded thusly:

As the Objection raised in the Advisory Action [dated August 1, 2006] was to the FIGURE 5 Drawing and its recitation in the Specification, this Application is now considered to be in condition for Allowance, which action is respectfully requested.

The facsimile transmission also asked if I could discuss the attached as a manner of overcoming [Ms. Hylton's] Objection to FIGURE 5, the only issue I saw still remaining in this Case.

13. On November 21, 2006, Examiner Hylton telephoned me to advise of the need for the filing of a second month Extension of Time Fee for the October 3, 2006 facsimile of the Second Corrected Amendment Under Rule 116. That same day, I faxed to the Patent Office its Form PTO 2038 for credit card payment of the second month Extension of Time Fee for the Small Entity Applicant, \$225.00. Attached is a copy of the Patent Office's auto-reply facsimile transmission.

14. On June 8, 2007, I received a telephone call from the Applicant asking as to the status of the File. I then interrogated the Patent Office website and learned from it that the Application was abandoned January 30, 2007 for "Failure To Respond To An Office Action". On further investigation, I was advised that the Application was abandoned for the reason that no Extension of Time Fees were paid.

15. It is submitted that the Fee Request of Examiner Hylton was paid the exact day that it was advised by the Examiner, and in the correct amount for the second month filing after the "due date" pursuant to the Final Rejection.

16. If it is determined that the Extension Fee should have been calculated to the November 21st communication with Examiner Hylton, instead of to the October 3rd date when the

Amendment was transmitted, then an additional check for \$570.00 is enclosed for the response within the 4th month after due date response -- representing the difference between the required amount for "4th month response" and the \$225.00 already submitted.

17. In any event, any Abandonment of this Application will be seen to have been unintentional.

Respectfully submitted,



CHARLES I. BRODSKY
Attorney
Registration No. 22,058

Dated: June 12, 2007

TO:Auto-reply fax to 732 0626 COMPANY:

Auto-Reply Facsimile Transmission



TO: Fax Sender at 732 303 0626

Fax Information

Date Received: 11/21/2006 12:15:14 PM [Eastern Standard Time]
Total Pages: 2 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page

11/21/2006 13:13 732-303-0626

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PAGE 01/02

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Facsimile Cover Sheet

To: USPTO

Facsimile: 1-571-273-8300

From: C: Brodsky

Date: 11/21/06

Reference: SN 10/810,544 - Simcovitch

Message:

Ex. Robin Hylton of GAV 3727 advised today of need for
 2nd month extension of time fee for the Oct 3, 2006
 fax of a Corrected Amendment under Rule 116. The
 Applicant is a Small Entity
 Attached is B.070.2038 as to this.

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